

105 KAR 1:390. Employment after retirement.

RELATES TO: KRS 16.505(15), 61.510, 61.637, 78.510(3), (18), 26 U.S.C. 401(a), 26 C.F.R. 1.401-1, 1.401(a)-1

STATUTORY AUTHORITY: KRS 61.645(9)(g)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(g) requires the Board of Trustees of Kentucky Retirement Systems to promulgate administrative regulations necessary or proper in order to carry out the purposes and provisions of KRS 61.515 to 61.705, 16.510 to 16.652, and 78.520 to 78.852. This administrative regulation concerns the administration of KRS 61.637 in conjunction with federal law regarding bona fide separation from service and changes in employment relationship if a member returns to employment with a Kentucky Retirement Systems participating employer after retirement. 26 C.F.R. 1.401-1(a)(2) requires that a qualified plan expressly provide in its statutes and administrative regulations (plan documents) how it shall administer its plan in accordance with federal law in order to maintain the tax-qualified status of the plan. This administrative regulation is necessary to maintain the tax qualified status of the Kentucky Employees Retirement System, the County Employees Retirement System, and the State Police Retirement System under 26 U.S.C. 401(a), and to comply with the provisions established in 26 C.F.R. 1.401-1(b)(1)(i) and 1.401(a)-1.

Section 1. Definitions. (1) "Initial retirement date" means the member's effective retirement date as defined in KRS 61.590(5).

(2) "Participating employer" means an employer that participates in one of the systems administered by Kentucky Retirement Systems.

(3) "Reemployment", for purposes of KRS 61.637, means the retiree's first membership date following his initial retirement date, as long as the retiree has not had a cessation of membership as provided in KRS 61.535 and 61.550.

Section 2. "Reemployed", for purposes of this administrative regulation, shall not include a transfer to another position with the same employer.

Section 3. (1) Returning to work in a participating position. A retired member who is reemployed in a participating position shall have:

(a) A bona fide separation from service as provided in subsection (2) of this section; and

(b) A break in service as provided in subsection (3) of this section.

(2) "Bona fide separation from service" as provided in this section shall include a cessation of the employment relationship between the member and the member's employer without a prearranged agreement when the member retires that the member will return to work for any participating employer in any capacity. "Bona fide separation from service" shall also exclude a prearranged agreement to return to work for any participating employer as a leased employee.

(3) "Break in service" as provided in this section shall require that:

(a) A member who retired from a hazardous position shall have a one (1) calendar month break in service before returning to work with a participating employer in a hazardous participating position.

(b) A member who retired from a nonhazardous position shall have a three (3) calendar month break in service before returning to work with a participating employer in a hazardous participating position.

(c) A member who retired from a hazardous or a non-hazardous position shall have a three (3) calendar month break in service before returning to work with a participating employer in a non-hazardous participating position.

(4) If the member does not have a bona fide separation from service and a break in service and returns to work with any participating employer, the retired member's retirement shall be voided. The member shall repay all retirement allowances, dependent child payments, and health plan premiums paid by the Kentucky Retirement Systems.

Section 4. (1) Returning to work for a participating employer in a nonparticipating position. A retired member who is employed by a participating employer in a non-participating position shall have:

- (a) A bona fide separation from service as provided in subsection (2) of this section; and
- (b) A break in service as provided in subsection (3) of this section.

(2) "Bona fide separation from service" as provided in this section means a cessation of the employment relationship between the member and the member's last employer without a pre-arranged agreement when the member retires that the member will return to work for the member's last employer in any capacity. "Bona fide separation from service" shall also exclude a prearranged agreement to return to work for the member's last employer as a leased employee.

(a) For purposes of this section, all participating employers in the Kentucky Employees Retirement System and the State Police Retirement System shall be treated as the same participating employer.

(b) For purposes of this section, County Employees Retirement System agencies, each county, as defined by KRS 78.510(3), shall be treated as a separate employer.

(3) "Break in service" as provided in this section shall require that a member who retired from a hazardous or nonhazardous position and becomes employed in a nonparticipating hazardous or nonhazardous position shall have a three (3) calendar month break in service before returning to work with a participating employer.

Section 5. (1) Returning to work with the same employer in a position required to participate in a retirement system. A retired member who is reemployed in a position required to participate in a different retirement system not administered by Kentucky Retirement Systems shall have:

- (a) A bona fide separation from service as provided in subsection (2) of this section; and
- (b) A break in service as provided in subsection (3) of this section.

(2) "Bona fide separation from service" as provided in this section means a cessation of the employment relationship between the member and a participating employer without a prearranged agreement when the member retires that the member will return to work for the same employer in any capacity. "Bona fide separation from service" shall also exclude a prearranged agreement to return to work for the same employer as a leased employee.

(a) For purposes of this section, all participating employers in the Kentucky Employees Retirement System and the State Police Retirement System shall be treated as the same participating employer.

(b) For purposes of this section, County Employees Retirement System agencies, each county, as defined by KRS 78.510(3), shall be treated as a separate employer.

(3) "Break in service" as provided in this section shall require that:

(a) A member who retired from a hazardous position and becomes employed by the same employer in a hazardous position required to participate in a retirement system not administered by Kentucky Retirement Systems, shall have a one (1) calendar month break in service before returning to work with a participating employer.

(b) A member who retired from a nonhazardous position and becomes employed by the same employer in a hazardous position required to participate in a retirement system not ad-

ministered by Kentucky Retirement Systems, shall have a three (3) calendar month break in service before returning to work with a participating employer.

(c) A member who retired from a nonhazardous position and becomes employed by the same employer in a participating non-hazardous or hazardous position in a retirement system not administered by Kentucky Retirement Systems, shall have a three (3) calendar month break in service before returning to work with a participating employer.

(4) If the member does not have a bona fide separation from service and a break in service and returns to work with the same employer in a position required to participate in a retirement system not administered by Kentucky Retirement Systems, the retired member's retirement shall be voided. The member shall repay all retirement allowances, dependent child payments, and health plan premiums paid by the Kentucky Retirement Systems.

Section 6. (1) Returning to work for a different participating employer in a nonparticipating position. A retired member who becomes employed in a nonparticipating position shall not be required to have a bona fide separation from service if the retired member becomes employed with a different participating employer than the retired member's employer prior to retirement.

(2) A retired member who becomes employed in a non-participating position shall have a three (3) calendar month break in service.

(3) For purposes of this section, all participating employers in the Kentucky Employees Retirement System and the State Police Retirement System shall be treated as the same participating employer.

(4) For purposes of this section, for County Employees Retirement System agencies, each county, as defined by KRS 78.510(3), shall be treated as a separate employer.

Section 7. (1) Requirements before employment after retirement. The retired member and the reemploying employer shall certify that when the member retired, there was no prearranged agreement to employ the retired member after the member's retirement. The retired member and reemploying employer shall complete and file at the retirement office the Form 6751, Retired Member and Employer Certification Regarding Reemployment.

(2) The retired member shall report in writing to Kentucky Retirement Systems future employment in any capacity with any participating employer.

Section 8. Status as an Employee. (1) A retired member and a Kentucky Retirement Systems participating employer shall file written notice at the retirement office if the retired member has accepted employment with the participating employer under a personal services contract.

(2) If Kentucky Retirement Systems determines that the retired member is an employee of the participating employer, rather than an independent contractor, the retired member shall be subject to Sections 1 through 5 of this administrative regulation.

(3) Kentucky Retirement Systems shall take appropriate action to determine the individual's status as an independent contractor or employee.

Section 9. Leased Employees. (1) A retired member and a participating employer shall file at the retirement office written notice if the retired member is performing work for the participating employer through a private leasing company, a temporary staffing agency, or any other company.

(2) If the retirement system determines that the retired member is an employee of the participating employer, rather than the private leasing company, temporary staffing agency, or other company, the retired member shall be subject to the provisions of Sections 1 through 5 of this

administrative regulation.

Section 10. Incorporation by Reference. (1) "Member and Employer Certification Regarding Reemployment", Form 6751, May 2009, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, from 8 a.m. to 4:30 p.m. (34 Ky.R. 826; 1388; eff. 1-4-2008; 35 Ky.R. 975; 1723; eff. 2-6-2009; 36 Ky.R. 141; eff. 10-2-2009.)